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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/939,303	08/24/2001	William B. Dress	UBAT:030US/JJB	2552

25094 7590 07/03/2003

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EXAMINER

TURNER, SAMUEL A

ART UNIT

PAPER NUMBER

2877

DATE MAILED: 07/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/939,303

Applicant(s)

DRESS ET AL.

Examiner

Samuel A. Turner

Art Unit

2877

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-27 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 August 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_.
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_ 6) ☐ Other: \_\_\_\_\_

### DETAILED ACTION

The abstract of the disclosure is objected to because the abstract must be limited to 150 words. Correction is required. See MPEP § 608.01(b).

The drawings are objected to because the drawings are informal. Correction is required.

#### Rejections Under 35 U.S.C. § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter or any new and useful improvement thereof, may obtain a patent therefore, subject to the conditions and requirements of this title.

Claim 10 is rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter. The claim is directed to a generic electromagnetic waveform which occurs naturally. Please note that the method limitations of claim 1 do not further limit the product of claim 10.

#### Rejections Under 35 U.S.C. § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. § 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-5, 10, 13-19, 26, and 27 are rejected under 35 U.S.C. § 102(b) as being clearly anticipated by Larchuk et al(Physical Review Letters-1993).

Larchuk et al teach interfering entangled photons of different colors comprising a laser source, a lens, a crystal of deuterated potassium dihydrogen phosphate(KD\*P), a full spatial overlap Mach-Zehnder interferometer having a moving mirror to provide a phase shift, a beam-splitter for combining the to interfering two colored beams, and two detectors. See figure 1a.

Claims 1-7, 10, 13-19, 26, and 27 are rejected under 35 U.S.C. § 102(b) as being clearly anticipated by Shimizu et al(1997).

Shimizu et al teach a Quantum communications apparatus using entangled two color photons comprising a pump source, Type-II converting crystal, dual wavelength filters, which overlap the different colors, wavelength demultiplexers including a phase shifter in one arm, combining beam-splitter(BS), two polarization beam-splitters(PBS), and four detectors. See figure 1.

Claim 10 is rejected under 35 U.S.C. § 102(b) as being clearly anticipated by any electromagnetic waveform.

Claim 10 is a product-by-process claim, a product; the waveform produced by the process; the method of claim 1. As such the process does not limit the product claimed. The claim is limited to the structure of the waveform and as the claim includes no structure the waveform is anticipated by any electromagnetic waveform.

### **Claim Rejections Under 35 U.S.C. § 103**

The following is a quotation of 35 U.S.C. § 103(a) which forms the basis for

all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. § 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. § 103(c) and potential 35 U.S.C. § 102(f) or (g) prior art under 35 U.S.C. § 103(a).

Claims 9, 11, and 12 are rejected under 35 U.S.C. § 103(a) as being unpatentable over Shimizu et al(1997).

While Shimizu does not make any specific reference to a computer a 2-bit communications channel would clearly have been controlled by computer. Therefore it would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a computer program for implementing the claimed method, saving that program in any electronic media, and storing the electronic media in some apparatus such as a CD case or disk holder.

Claims 8, and 20-25 are rejected under 35 U.S.C. § 103(a) as being unpatentable over in view of Kim et al(Physical Review A-May 2001).

Kim et al teach that in entangled particle two color experiments dichroic

Serial Number: 09/939,303

-5-

Art Unit: 2877

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filters can be used to separate the different colors, and interference filters and spatial filters can be used to reduce the noise.

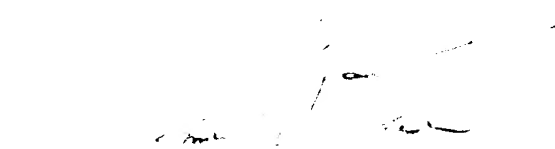
Shimizu uses polarizing beam-splitters to separate the different colors, however it would have been obvious to one of ordinary skill in the art at the time the invention was made to replace the PBS's with dichroic beam-splitters and include both color and spatial filters to reduce noise at the detectors.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Samuel A. Turner whose telephone number is **(703) 308-4803**. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Frank G. Font, can be reached on (703) 308-4881.

The fax phone number for this Group is (703) 308-7722. The faxing of papers related to this application must conform with the notice published in the Official Gazette, 1096 O.G. 30 (15 November 1989). The Group receptionist telephone number is (703) 308-0956.

Any inquiry of a technical nature regarding reissues, petitions, and terminal disclaimers should be directed to Ed Glick whose telephone number is (703) 308-4858, Hien Phan whose telephone number is (703) 308-7502, or Ed Westin whose telephone number is (703) 308-4823.

Any other inquiry of a technical nature, and all inquiries of a general nature including those relating to the status of this application or any patent term adjustment should be directed to TC2800 Customer Service Office whose telephone number is (703) 306-3329.

  
Samuel A. Turner  
Primary Examiner  
Art Unit 2877

SAT  
June 13, 2003